

Martha J. Frutchey, U.S. District Reporter

1 **Monday, August 23, 2010**

2 THE COURT: Be seated, please. Sound case 09-CR-358,
3 United States of America versus Yolanda Denise Scott, set down
4 this morning for sentencing. Is the government ready?

5 MS. HOYT: We are, Your Honor.

6 THE COURT: Defense ready?

7 MR. SAVIELLO: We are, Your Honor.

8 THE COURT: All right. The Court has the presentence
9 report and would like to adopt the portions of the presentence
10 report to which there have been no objection and make those the
11 findings of the Court. Is there any problem with that on behalf
12 of the government?

13 MS. HOYT: No, Your Honor.

14 THE COURT: On behalf of the defendant?

15 MR. SAVIELLO: No, Your Honor.

16 THE COURT: So ordered. Now, let's see if we can take
17 up the objections. I think there are two by the defendant.
18 First one I want to take up concerns paragraphs 21 and 28 where
19 points are given for obstruction. Tell me about your objection,
20 Mr. Saviello.

21 MR. SAVIELLO: Yes, sir, Your Honor. Essentially our
22 argument on this objection is that Ms. Scott's testimony at
23 trial, which is according to the probation the substance which
24 they think rises to the level of the objection and otherwise
25 justifies the enhancement, we believe does not rise to the level

1 that would justify the enhancement, and we think a closer look
2 than the normal, she testified, she got convicted, she must have
3 been lying approach is appropriate here.

4 And as I have pointed out in our sentencing memorandum,
5 while perjured testimony has often been held to support this
6 enhancement, that still requires that the District Court make a
7 specific finding that the testimony was, in fact, perjured. And
8 the simple fact that the defendant testified, exercising her
9 constitutional right, testifying in her own defense, and was
10 later convicted does not automatically mean that the testimony
11 was perjured.

12 I cited to the Court two cases which I believe are
13 instructive on this point. The first one United States versus
14 Hasner, which is Eleventh Circuit case from 2003. That was a
15 fraud case as well, Your Honor. In that case the defendant was
16 a real estate agent working for a real estate company in
17 Florida, and she negotiated with the local governmental agency,
18 the head of the local governmental agency essentially a finder's
19 fee for that person, the head of the agency, in that if he
20 steered business from the agency her way, and the real estate
21 transaction was successfully completed, she would funnel back to
22 him a kickback, essentially.

23 She testified in her own defense at trial, and the
24 government pointed out in that case several specific points they
25 said clearly indicated that she perjured herself. The District

1 Court did not find so, and instead found that, well, they were
2 able to impeach the defendant's testimony. It didn't rise to
3 the level of proven perjury, which would otherwise justify the
4 enhancement. The Eleventh Circuit agreed and did not grant the
5 government's appeal on that point.

6 I would argue in that case, Your Honor, the woman
7 testified in her own defense, and the way they impeached her was
8 instructive comparatively to what we have here, that is, the
9 woman testified there was no previous -- or that she testified
10 initially that she denied in her testimony that she had tried to
11 hide from the governmental agency the existence of this finder
12 fee agreement. That was disproven by testimony from and
13 circumstantial evidence throughout the case that the agreement
14 did exist and other things of that sort. Secondly, she
15 testified that the fee agreement had, in fact, been disclosed to
16 the governmental agency, when, in fact, the governmental agency
17 had no record of that and there was direct testimony disproving
18 that fact. And third, that her testimony was that the
19 government, the head of the governmental agency had instead
20 earned a commission for his participation as opposed to it being
21 an improper kickback, again, disproven by the record and the
22 written agreement between the parties in that case.

23 So the level of impeachment there, Your Honor, was
24 pretty significant. Nevertheless, the District Court in that
25 case found that that testimony did not rise to the level of

1 perjury, and, again, the Eleventh Circuit in affirming that
2 decision said although the government was able to impeach her
3 testimony, we cannot say that the inconsistencies required an
4 upward adjustment.

5 Secondly, Your Honor, United States versus McDonald,
6 which is an Eleventh Circuit 1991 case. In that case the
7 defendant -- it's a drug case -- the defendant essentially
8 introduced an undercover federal agent to a drug supplier. The
9 defendant in that case raised an entrapment defense, testified
10 on his behalf, which, of course, entrapment being an affirmative
11 defense. He testified that the confidential informant in this
12 case working with the government, he had a personal, spiritual
13 relationship with that person, owed the person money, and that
14 the confidential informant coerced him or forced him into
15 introducing the drug dealer to the agent as a way to repay that
16 debt and he otherwise wouldn't have done it.

17 The testimony at trial, of course, included the
18 testimony of the law enforcement agent. He was present at the
19 introduction. He testified that there was nothing of that sort,
20 but instead that the defendant in that case was conducting what
21 would be in the agent's experience what would be a normal
22 introduction between a potential buyer of drugs and a potential
23 seller of drugs, and no discussion of entrapment or having to
24 repay a debt, anything of that sort.

25 Again, in McDonald, the government complained that his

1 testimony, defendant's testimony rose to the level of
2 obstruction, and, again, the Eleventh Circuit disagreed, finding
3 that there were inconsistencies and impeachment by the
4 government, but it didn't rise to the level of perjury.

5 So comparing those two factual scenarios with the
6 factual scenarios we have here, Your Honor, we would argue that
7 Ms. Scott's testimony, while impeached by the government, and
8 obviously sufficiently done so to get a conviction, we would
9 argue it did not rise to the level of affirmative perjury. The
10 only thing that really contradicts Ms. Scott's testimony is Ms.
11 Scruggs, Your Honor.

12 Certainly there were records found in Ms. Scott's house.
13 She gave an explanation for why those records were there, a non
14 criminal explanation. And but for Ms. Scruggs' testimony
15 explaining her version of how the records -- the information
16 came to her, and about the one thousand dollar payment, so on
17 and so forth, I don't think the government would have been able
18 to make their case.

19 So when you compare Ms. Scruggs' credibility as an
20 impeaching agent versus, for instance, in McDonald, a federal
21 law enforcement agent's credibility as an impeaching agent, if a
22 federal law enforcement agent, who directly impeaches the
23 defendant's testimony, directly contradicts it, resulting in a
24 conviction, if that impeachment is not enough to justify an
25 obstruction enhancement, that is, to justify a finding of

1 affirmative perjury, which is required under these factual
2 scenarios, then Ms. Scruggs who arguably has significantly less
3 credibility than a federal law enforcement agent, specifically
4 considering her life-long history of running cons and fraudulent
5 conduct, we would argue then that the government is unable and
6 the Court should not find to a preponderance that Ms. Scott
7 committed perjury in this case, notwithstanding the impeachment,
8 notwithstanding inconsistencies with the other evidence. And if
9 you can't find specifically to a preponderance that it was
10 perjury, then the enhancement for obstruction is not justified,
11 and we would ask you to follow the Eleventh Circuit law in
12 Hasner and McDonald and not apply it, Your Honor.

13 THE COURT: Well, now let me make sure. In your
14 argument the explanation your client gave about the documents
15 being at her house or about taking this home was to make some
16 kind of training notebook.

17 MR. SAVIELLO: Yes, sir.

18 THE COURT: Is that the explanation you are talking
19 about?

20 MR. SAVIELLO: Yes, sir.

21 THE COURT: But then she had this notebook, but admitted
22 she put that together rather recently.

23 MR. SAVIELLO: Well, certainly, Your Honor. The
24 evidence when they conducted the search of her house was that
25 notebook had not been created, the documents were there in her

1 house. The notebook was created for purposes of trial to
2 instructively give an example to the jury how she would have put
3 those documents together had the search not been conducted and
4 the documents seized. We are not arguing, and I know that comes
5 up in a report and the government's pleadings, and I thought I
6 was perfectly clear during trial that the notebook was not a
7 replica of something that had been done, but rather it was the
8 next logical step for why she had the documents at home, to show
9 they could be organized in a way that would support her
10 document, that it could be organized as a training manual.

11 THE COURT: Okay. Well, let's see what the government
12 says. Government wish to response?

13 MR. GRIMBERG: Yes, Your Honor. Good morning, Your
14 Honor. Stephen Grimberg on behalf of the United States. Mr.
15 Saviello is correct that it is the District Court's role to make
16 an independent determination of whether the witness -- or the
17 defendant perjured herself by evaluating the demeanor and the
18 behavior that she exhibited on the stand.

19 I don't know that there could be any situation where it
20 is clearer that the defendant perjured herself than in this
21 case, because she was asked a very direct question that went to
22 the ultimate issue in the case, and she was asked that question
23 on three separate occasions, and the question was in various
24 forms, were you providing customer account information to
25 Schnikia Scruggs, and on all three occasions she said absolutely

1 no.

2 There is no way that the jury could have come to the
3 determination that they did that she was guilty of the offenses
4 that she was convicted of if they had believed that testimony.
5 And that testimony cannot be true, when viewed in light of all
6 of the evidence that was presented by the government's case.

7 Mr. Saviello suggests that the only evidence that we
8 presented to counter her negative response to that question was
9 simply Schnikia Scruggs' testimony. Well, that's not true, Your
10 Honor. We had phone records showing numerous conversations
11 taking place between her and Ms. Scruggs from the bank on a cell
12 phone that was provided to her for the very purpose of engaging
13 in the scheme. We have documents found in her house that had
14 the very customer account information that was stolen that was
15 used by Ms. Scruggs. We have money being deposited in Ms.
16 Scott's bank account from Ms. Scruggs that was the payoff for
17 providing the account information.

18 All of that evidence belies her testimony under oath
19 that she did not provide account information to Ms. Scruggs.
20 The jury simply could not have reached the verdict that they did
21 if they believed her testimony, and anyone sitting in the
22 courtroom that day when she was testifying and evaluating her
23 behavior and her demeanor would have known that she was
24 committing perjury.

25 She perjured on that statement. She perjured on her

1 explanation for the documents being in her house. This story
2 that she was putting together a training notebook, it was simply
3 ridiculous, Your Honor. Some of those documents that were found
4 in her house had been printed at least four months before
5 execution of the warrant. And they weren't found assembled on
6 her desk or on the kitchen table, as if she was preparing a
7 notebook. They were found in her closet, in her bedroom closet
8 under her bed.

9 And she suggests there was a coincidence. It was simply
10 a coincidence that the documents that she had scurried away into
11 her house against bank policy was the account information, the
12 very same account information that was stolen. Her story was
13 simply ridiculous.

14 And then the third point that she made that was clearly
15 perjurious was the suggestion that the deposit made into her
16 bank account by Schnikia Scruggs was to pay for used furniture
17 that Ms. Scruggs had supposedly purchased from her antique
18 store, yet Ms. Scott could not provide a receipt, she could not
19 explain why the money had been deposited into her son's
20 custodial account and then immediately transferred into her own
21 account, rather than being deposited into the business account
22 that she had created for the business at SunTrust.

23 She simply lied over, and over, and over again, and when
24 evaluating her testimony, she was providing even gratuitous
25 lies. If you recall, Your Honor, she claimed she did not

1 remember her work phone number, that she did not remember her
2 cell phone number, that she did not remember her home telephone
3 number. She did not want to admit to anything that was going to
4 link back to her having a relationship with Schnikia Scruggs.
5 Even when I read the phone numbers back to her, okay, let's
6 assume for a moment that on the stand that you are nervous, that
7 you don't remember your home phone number or your cell phone
8 number. When someone reads the phone number back to you and you
9 still deny that that is the phone number that you had, that
10 clearly shows perjury.

11 She even denied that July and August comes after June,
12 if you remember that. I was trying to establish a timing and
13 she was denying that July and August came after June. That was
14 the demeanor she was showing on the stand.

15 As for the cases that are cited by Mr. Saviello, Hasner
16 and McDonald, all these cases stand for is the proposition that
17 it is the District Court's decision. The Eleventh Circuit says
18 that we cannot sit here looking at a cold record and determine
19 whether or not a witness perjured himself. That is the District
20 Court's role, the District Court was there, is able to evaluate
21 it, and the Eleventh Circuit simply punts this decision back to
22 the District Court and says we are not going to second guess.
23 That's all these cases say.

24 And I submit to Your Honor that, again, if this witness
25 did not -- is not deserving of the obstruction enhancement,

1 considering what she said, the substance of what she said, and
2 the way in which she said it, I'm not sure anyone would. Thank
3 you.

4 THE COURT: Thank you.

5 MR. SAVIELLO: Your Honor, just briefly. While I
6 appreciate Mr. Grimberg's recitation of his closing argument, I
7 think we are missing the point that you can't square the
8 holdings in Hasner and McDonald factually with this case and say
9 that Ms. Scott's testimony and the impeachment that the
10 government provided is so much greater than Hasner or McDonald,
11 and, yes, Hasner and McDonald, the Eleventh Circuit said we are
12 not going to overturn the Court's decision. The District Court
13 is in the best position to judge. You are the District Court
14 judge. But you have to look at the facts. The Eleventh Circuit
15 is not a shy Court of Appeals. They do not hesitate to reverse
16 District Judges on a regular basis if they think they've made a
17 mistake.

18 THE COURT: I've noticed.

19 MR. SAVIELLO: So in this particular case when you look
20 at the facts of this case, Ms. Scott's testimony compared to the
21 impeachment that the government brought against her, compare
22 that to McDonald, for instance, where the defendant testified he
23 only made the introduction under duress of entrapment, and the
24 federal agent who was present and party to the introduction said
25 that is not true, I was there, this is what he said, the federal

1 agent versus Ms. Scruggs. If you really break it down, that's
2 what we are talking about. And if a federal agent's credibility
3 directly against McDonald's, the defendant's credibility is not
4 enough under the Eleventh Circuit's view to justify obstruction,
5 then how can Ms. Scruggs be, everything else notwithstanding.

6 And I would point out about the phone records, the
7 government cites that as great authority showing perjury.
8 Again, the phone records are simply records of phone calls.
9 There is no question that Ms. Scott and Ms. Scruggs had a prior
10 relationship in which they would place phone calls to each
11 other. The substance of those phone calls was not recorded, was
12 not memorialized in any way, so the existence of the phone calls
13 either from work or any other phones doesn't show anything other
14 than the fact that they had a relationship.

15 So noting all of that, Your Honor, you can't -- I don't
16 think that you can square the facts of this case with the
17 holdings and the facts in Hasner and McDonald and justify the
18 obstruction enhancement; notwithstanding that she testified, the
19 jury disbelieved her and convicted her. They did the same with
20 McDonald and they did same the with Hasner, who testified
21 unequivocally multiple times on the stand, I didn't do it, this
22 is what I did, and it was not perjury.

23 THE COURT: Well, coming from Superior Court, I kind of
24 believe a person has the right to defend themselves and deny it.
25 It is when it goes beyond that telling their side of it that we

1 get into this obstruction, although I think some of the other
2 judges on the Court probably draw a line a little closer or a
3 little further away from the defendant perhaps than I do.

4 But I guess the problem I have in this case is the
5 documents in her house, this notebook she shows up with at
6 trial, and her position about these deposits and that they were
7 for furniture. It kind of takes her across the line in my
8 opinion.

9 And I'm sitting here looking at 3C1.1, commentary note,
10 application note 4, particularly 4B and C. So I'll overrule
11 that objection.

12 Now, the next objection, let me see if I can save you
13 all some time, I find it has more merit. She has a criminal
14 history, one point for some kind of fighting offense in College
15 Park. That doesn't really take her out of category number 1,
16 but the fact that she's on some kind of misdemeanor probation,
17 probably to pay a fine and to keep her away from getting
18 involved in anymore fights, although the defendant doesn't
19 appear to be a person that would engage in that kind of conduct.
20 I think the two points that get added for her being on probation
21 for a fray overstates her criminal history, but I'm happy to
22 hear from the government further.

23 MS. HOYT: Your Honor, beyond what I have said in the
24 sentencing memorandum on this point, I don't have a lot to add,
25 but I would like to just restate briefly, if I could, what I did

1 in the sentencing memorandum, which is that it's the
2 government's position that criminal history category 2, first of
3 all, results from an accurate application of the Sentencing
4 Commission rules. It does not substantially overstate her
5 criminal history for the reasons that we set forth in our
6 memorandum. She was arrested for this offense while she was on
7 probation, but I did point out to the Court that while her --
8 she had other arrests than the fighting arrests.

9 THE COURT: But I can't really count the other arrests,
10 can I? I mean, I note the other arrests, particularly the
11 deposit account fraud in Henry County.

12 MS. HOYT: Your Honor, they weren't counted, and, again,
13 that resulted from an accurate application of the Sentencing
14 Guidelines. But I think this is not a case where up until she
15 got into his altercation she had never done anything in her
16 life. Within a four-year period from 2003 to 2007, she was
17 charged with four criminal offenses and convicted of those four
18 criminal offenses. Three out of the four involved dishonesty.
19 One involved fraud on a financial institution, like the instant
20 offense, and so for that reason I think that basically -- The
21 Court's position that it might be a little bit too harsh to
22 assess the extra two points because of the fighting charge, if
23 that was the only thing she had ever done other than the instant
24 offense, I can't say that I would agree with the Court's
25 position, but I think that position would have more merit than

1 it does in this case. I don't really have anything to add other
2 than to say that in light of all the facts and circumstances, in
3 light of her -- the entirety of her criminal history, and in
4 light of the fact that criminal history category 2 really just
5 results in a three to four month increase over -- in her
6 sentence over criminal history category 1, I don't think it
7 substantially overrepresents her criminal history. Thank you,
8 Your Honor.

9 THE COURT: Okay. Well, I'll make a finding that the
10 two points for -- added, while she was on probation for a fray
11 in Clayton County, overstates her criminal history, so I'll
12 sustain that objection and put her in criminal history category
13 Roman numeral 1. Are there any other objections I need to
14 consider?

15 MR. SAVIELLO: There are no other guideline objections,
16 Your Honor. We have argument regarding 3553 factors and what
17 would be a reasonable sentence.

18 THE COURT: Well, let's see if I can make a guideline
19 calculation here. Count 1 carries up to 30 years in
20 confinement, a million dollar fine or both. Counts 4 and 5, two
21 years consecutive, \$250,000 fine as to each count. Mandatory
22 minimum on Counts 4 and 5 are two years consecutive, \$250,000
23 fine. She has a total offense level of 19. Criminal history
24 category Roman numeral number 1. That yields -- let me make
25 sure. That gives a custody guideline range on Count 1 of 30 to

1 37 months. Counts 4 and 5, 24 to 48 months, making a guideline
2 range totally of 54 months to -- wait a minute. Is it 85
3 months? No. Yeah. 85 months. Fine guideline range of 6,000
4 to 60,000. Restitution in the amount of \$125,604.94. Special
5 assessment of \$300. There is no forfeiture provision. There is
6 not a probation option. Supervised release on Count 1,3 to 5
7 years, Counts 4 and 5, 1 year as to each count. It is noted she
8 is a United States citizen.

9 If there is no further objection, the Court will adopt
10 those as the guideline calculations. At this time I'll afford
11 the defendant and her attorney an opportunity to be heard in
12 extenuation and mitigation. The defendant has the right to
13 address the Court personally and she may do so, but I'll let you
14 proceed, Mr. Saviello.

15 MR. SAVIELLO: Thank you, Your Honor. I'd like to make
16 my argument first for extenuation and mitigation. As the Court
17 is aware, Title 18, United States Code, section 3553 gives
18 specific guidance to the Court as to what factors Your Honor
19 ought to consider when determining what a reasonable sentence is
20 in this case. Notwithstanding the guidelines in this case,
21 there is, of course, a 24-month mandatory minimum on certain
22 counts, but otherwise beyond that 24 months it is solely within
23 Your Honor's purview to determine what is reasonable.

24 And of the factors in 3553, which I find -- I think Your
25 Honor has found to be a good guidepost for how to approach

1 mitigation arguments, I think there are several in Ms. Scott's
2 case that warrant specific attention.

3 First, 3553 suggests, of course, that the sentence not
4 be any greater than necessary to meet the status -- meet the
5 requirements imposed. The first of those would be the nature
6 and circumstances of the offense.

7 And the only point I would make here, Your Honor, we had
8 a trial in this case. The facts are abundantly clear.
9 Conviction came down. Your Honor, we are all familiar with the
10 facts, and I don't think they need significant repeating, but I
11 would point out regarding the nature and circumstances of the
12 offense, and this will come back to the disparity argument I
13 make towards the end of this. Keep in mind the difference in
14 conduct between Ms. Scruggs and Ms. Scott, the two defendants
15 remaining in this case not given pretrial diversion as Mr.
16 Monroe was. And I would just point out again, and I'll do so in
17 a little more detail later, that Ms. Scott's conduct I would
18 argue is significantly lesser than Ms. Scruggs' conduct, and
19 that is Ms. Scruggs crafted the scheme, Ms. Scruggs benefitted
20 almost exclusively from the scheme, and Ms. Scruggs exercised
21 incredible creativity and drive in her -- the manner and means
22 in which she found to drain these bank accounts through PayPal
23 and through other methods. I would just like you to consider
24 that in the context in which we look at some of these other
25 factors.

1 Moving on to history and characteristics of the
2 defendant, we just spoke about this with the overrepresentation
3 of criminal history. But for several minor brushes with the
4 law, Ms. Scott has otherwise been generally a law-abiding
5 citizen. She had a bad check charge. I disagree with the
6 government's contention that she had four prior convictions, but
7 rather there were three between 2003 and 2007. But the
8 presentence report speaks specifically to that, which Your Honor
9 has already adopted.

10 Moreover, Your Honor, regarding Ms. Scott, she began
11 working when she was 13 years old, a fairly young age, but
12 helping to provide for her family. She continued to work some
13 over the next few years during school, but after the age of 19,
14 Your Honor, Ms. Scott worked continuously. Her Social Security
15 records indicate lawful, legal gainful employment from the age
16 of 19 up until she was arrested in 2007 for this offense
17 conduct, when she's been unable to get gainful employment since
18 then, pending State Indictment and pending Federal Indictment
19 investigation.

20 I think it is noteworthy that she has had such a solid
21 work history, when in this court so often we don't have that to
22 view, and I think that's an indication of the characteristics of
23 Ms. Scott that suggests a lower sentence is appropriate.

24 Moreover, Your Honor, Ms. Scott has two children. She
25 has an 8-year-old son, which she is the primary caregiver. The

1 child's father is not particularly involved in his upbringing.
2 She also has a four-month-old daughter. Your Honor is aware she
3 gave birth just very shortly before trial in this case.
4 Obviously, her four-month-old daughter is at an incredibly
5 tender age for her mother to be taken away from her, Your Honor.
6 So we would ask you to consider that as one of the
7 characteristics of the defendant when thinking about a
8 reasonable sentence.

9 Next, 3553 suggests that Your Honor consider the need
10 for the sentence to afford adequate deterrence. And, of course,
11 the degree and severity of the sentence imposed in a criminal
12 case ought naturally to depend upon the susceptibility of the
13 defendant to the deterrent message imposed by the Court, when
14 you consider deterrence as an appropriate factor for determining
15 what the sentence ought to be.

16 And I would argue in this particular case, Ms. Scott's
17 conduct while on pretrial release has been exemplary, and I
18 would note she was arrested and made bond in the state court in
19 2007. So she was on one form or another of pretrial release for
20 almost three full years without any violations of the terms of
21 her pretrial release, without any indication that there was any
22 problems, that she was up to no good in any way, shape, or form,
23 and that's an extraordinary long time to be under investigation
24 and Indictment and under supervision, and I believe that her
25 conduct during those three years is, in fact, an accurate

1 picture of what Your Honor could expect from Ms. Scott's
2 approach to this case and her respect for the justice system,
3 and her willingness to do what is required from her on pretrial
4 release, even while disagreeing with the charges, and
5 disagreeing with the testimony against her, and disagreeing, in
6 fact, with her conviction, Ms. Scott continued to follow the
7 rules as imposed by the Court showing her respect for the
8 system.

9 So when considering deterrence, I think the facts are
10 clear Ms. Scott understands the seriousness of the case,
11 understands what it means to be convicted and to have a
12 sentence, and the sentence ought to not be increased for greater
13 deterrence purposes.

14 Next, the need to protect the public from further crimes
15 of the defendant. Just very briefly, considering there is a
16 two-year mandatory minimum in this case and her work history and
17 personal history, I don't think any greater sentence is needed
18 to protect the public from any future crimes of Ms. Scott.

19 Finally, Your Honor, the need to avoid unwanted
20 sentencing disparities among defendants similarly situated. And
21 this is where I would argue that Your Honor should pay close
22 attention, and put some significant focus, and that is that Ms.
23 Scruggs concocted and conducted this scheme pretty much from
24 start to end. If the evidence is believed that the source of
25 some of the information came from Ms. Scott, the evidence is

1 also abundantly clear from multiple sources, including records
2 that Ms. Scruggs profited almost exclusively from this scheme,
3 and, again, she controlled the flow of information, she
4 controlled what she did with the information, she controlled how
5 she disseminated that information to others, and coached others
6 how to drain those bank accounts. None of that done by Ms.
7 Scott.

8 So considering Ms. Scruggs and Ms. Scott, I think it is
9 fair to say Ms. Scruggs is much more culpable, certainly much
10 more involved in the scheme. And then we look at Ms. Scruggs'
11 criminal history, which the Court remembers, goes far, far back.
12 All it fraud conduct, Your Honor, in varying forms, increasing
13 in complexity in the nature of the years she became more
14 accomplished, or believed she was becoming more accomplished.

15 Nevertheless, compared to Ms. Scott, a significant
16 difference. Bringing me then to the sentence that Ms. Scruggs
17 received in this case of 40 months, credit for the 22 months she
18 did in state custody, resulting in that federal custodial
19 sentence of 18 more months to do, and I would just ask Your
20 Honor to consider that when considering what an appropriate
21 sentence for Ms. Scott is.

22 Yes, Ms. Scott went to trial. Yes, she lost at trial
23 and the jury found her guilty. Nevertheless, exercising your
24 constitutional right to trial ought not to increase your
25 punishment significantly. And 3553 specifically grants the

1 Court, orders the Court to consider disparate sentences between
2 similarly-situated defendants. And in this case we would argue
3 Ms. Scruggs was much more involved, profited much more greatly,
4 and, in fact, has been an fraudster for her entire adult life,
5 and Ms. Scott's sentence as someone who did not profit greatly,
6 was much less involved in the scheme than Ms. Scruggs, does not
7 have a prior fraud history even approaching Ms. Scruggs, ought
8 to have a similarly lower sentence. If the guidelines are to be
9 followed, Your Honor, and there is no adjustment from those,
10 then Ms. Scott's sentence would be higher than Ms. Scruggs, and
11 we think that is a disparity that Your Honor ought to not let
12 occur.

13 THE COURT: Well, but the real disparity, there is some
14 disparity, I'll agree with you. It causes me some concern, but
15 had she not gone to trial and got the three points for
16 acceptance of responsibility and had not gotten the two points
17 for obstruction, she would be about the same level as Ms.
18 Scruggs. Ms. Scruggs is just ahead of her from 22 months of
19 being in confinement. Ms. Scruggs had a greater criminal
20 history category than your client, wouldn't be too far from zone
21 C. However, your client was the one that worked for Wachovia
22 and violated the trust of an employer in the matter.

23 MR. SAVIELLO: I point out that Ms. Scruggs, of course,
24 went to the Barker's house as a notary to obtain their personal
25 information, invited into their home, gave her personal

1 information, and took advantage of that, and testified she had
2 done that a number times, and, in fact, maintained personal
3 identifying information from her job, such as it is, as a notary
4 on many other occasions, so in terms of violating personal
5 trust, a professional coming in to witness your signature into
6 your own personal home, I would argue violates the trust in an
7 equal way.

8 THE COURT: If you can't trust a notary, who can you
9 trust? Is that the argument?

10 MR. SAVIELLO: Absolutely, Your Honor. That's why
11 notaries exist.

12 THE COURT: They are certified to have good character.

13 MR. SAVIELLO: Exactly right. They exist for one
14 purpose and that is to transfer their credibility to the
15 document they are notarizing. So I would argue then that if
16 Your Honor is concerned about the violation of personal trust,
17 Ms. Scruggs is in a position of greater violation of personal
18 trust, going into people's homes.

19 THE COURT: Well, your argument has a lot of appeal.

20 MR. SAVIELLO: I'll sit down now, Judge.

21 THE COURT: All right. Let's see what the government
22 says, see if they agree.

23 MS. HOYT: Your Honor, the Court asked Mr. Saviello if
24 you can't trust a notary, who can you trust? And I would ask,
25 if you can't trust someone who works in the fraud detection

1 department of your bank, who can you trust to protect your
2 accounts? To say that Yolanda Scott was less involved in this
3 offense than Schnikia Scruggs just is completely inconsistent
4 with the facts in this case.

5 Yolanda Scott, as Meg Stitt testified, had the keys to
6 the kingdom. Schnikia Scruggs could not have done what she did,
7 she could not have defrauded these customers without Yolanda
8 Scott's help. Yolanda Scott was her source for the bank account
9 numbers that she got, including the bank account numbers of Cora
10 Barker's children, because the only information that she had
11 going in was Cora Barker's name and Cora Barker's Social
12 Security number. She got those children's bank accounts from
13 Ms. Scott.

14 One of the people that she was charged with protecting
15 was Deena Scott, the victim in this case, and I hope that the
16 Court got a letter that --

17 THE COURT: I did. I haven't mentioned that for the
18 record, but you have forwarded me a letter from Deena Scott,
19 which I have.

20 MS. HOYT: I'm sorry. I didn't mean to interrupt.

21 THE COURT: I have, and your letter is dated August
22 20th. I have read that.

23 MS. HOYT: And I would -- the government would like to
24 enter this letter from Ms. Scott into the record as a government
25 exhibit in the sentencing. Ms. Scott very much wanted to be

1 here, and I think that her letter goes right to the heart of the
2 issue of the Court needing to craft a sentence that is adequate
3 to punish this kind of crime.

4 She talks about -- she -- in the letter, Ms. Scott
5 thanks the government for what it does to try to help people who
6 have had their identities stolen. She talks about how violated
7 and vulnerable it made her feel in 2006 to realize that her
8 money market account had been plundered. She was at that time
9 caring for her sick and disabled mother, for whom she is still
10 caring. That's why she couldn't be here today. She was going
11 through a divorce, and she gets home one day and opens her money
12 market account to find out that it's been plundered. She talks
13 about the length of time that it took her and the visits to the
14 bank that she had to make to prove that these were unauthorized
15 transactions, because, of course, that is something that anybody
16 would have to do. You can't just go into the bank and say, hey,
17 you know what? Ten thousand dollars is gone from my account.
18 It wasn't me. Let me have ten thousand dollars. It takes a
19 long time, and we heard that from witness after witness in this
20 case. It takes a long time, it takes a lot of paperwork. The
21 bank has to make sure that it's not being flim-flammed by
22 someone who is being dishonest when they say that their money
23 has been stolen. All of that time, that individual, that
24 person, somebody like Ms. Scott who is going through a divorce,
25 who has a disabled mother to take care of, has to take that time

1 out of her life and go straighten things out to the bank.

2 She talks about her ongoing discomfort since this
3 incident and her uneasiness any time she has to disclose
4 anything like her Social Security number, and she basically says
5 something needs to be done to deter criminals from doing this.

6 And, Your Honor, the government would posit in this case
7 the guideline sentence with the consecutive mandatory minimum is
8 exactly what it takes to deter crime like this. As I said, and
9 I keep coming back to it, but I think it is particularly
10 egregious that Ms. Scott -- that the job she was charged with
11 was to protect bank customers from crime. She wasn't a
12 secretary. She wasn't a teller. She was someone who was
13 supposed to in her day-to-day work protect customers from fraud.
14 Instead, she was taking their documents home and selling the
15 information.

16 With regard to the history and characteristics of the
17 defendant, Your Honor, and the government pointed this out in
18 its memorandum, I think the history and characteristics of the
19 defendant mitigate in favor of this sentence that the government
20 is asking the Court to impose in this case. Ms. Scott is, as
21 her testimony at trial demonstrated, an intelligent and
22 articulate person. She had a long-time career in the banking
23 system. She was capable of earning an honest living. She is a
24 clever person, who on top of her stated job with the bank, went
25 out and formed her own business, set up a checking account for

1 it. She is a person who was capable of earning an honest living
2 and instead of doing that, she decided to try to supplement her
3 income with this kind of fraudulent activity.

4 And I would like to address for the Court something that
5 we also addressed in our sentencing memo and provided to the
6 Court. Subsequent to -- and really just a few weeks ago, the
7 United States Attorney's Office was contacted by a fraud
8 investigator at Home Depot. Ms. Scott contacted Home Depot and
9 made unsubstantiated allegations that Schnikia Scruggs was
10 stealing from Home Depot. She copied a WSB-TV news reporter
11 with this e-mail that she sent to Home Depot. Home Depot
12 contacted us after their fraud investigators did research and
13 learned Ms. Scott and Ms. Scruggs had been charged as
14 co-defendants in this crime. And once they learned that Ms.
15 Scruggs -- Ms. Scott had been convicted and Ms. Scruggs had
16 testified at trial, they decided not to go forward with their
17 investigation, the reason being pretty clear that these were
18 unsubstantiated allegations by someone who was angry at someone
19 who had testified against her. And I just submit to the Court
20 that that is just additional evidence of Ms. Scott's complete
21 lack of acceptance of responsibility. I'm not talking about
22 Sentencing Guidelines acceptance of responsibility, I'm talking
23 about acceptance of responsibility for what she has done, for
24 what there was clear evidence of.

25 I think that her testimony, the Court has already found

1 that it was obstructionist. As Mr. Grimberg very eloquently
2 argued, it was totally -- it just was completely incredible, and
3 now she compounds it by going out and trying to make trouble for
4 witnesses in the case by making allegations, that if she had
5 anything to substantiate them, there was nothing about it in the
6 e-mail, and I think that is something that the Court should also
7 consider as evidence of Ms. Scott's character, and of, you know,
8 how much she has learned her lesson in this case.

9 I would like to address for the Court the argument that
10 Mr. Saviello made about the unwarranted disparity in the
11 sentencing between Ms. Scott and Ms. Scruggs. As the Court
12 pointed out, first of all, Ms. Scruggs received credit for
13 acceptance of responsibility. She did not receive an
14 obstruction enhancement. And, Your Honor, I want to make
15 something clear, and that is that the government is not
16 defending anything that Schnikia Scruggs did. We are not doing
17 that at all. But the fact of the matter is that from the time
18 she was arrested on the underlying charges in Forsyth County,
19 she said to Deputy Nichols when he arrived, I know why you are
20 here and I'm going to tell you what I have done. She said that
21 when she answered the door.

22 And I can state in my place, Your Honor, that I listened
23 to several hours of a recorded statement that Ms. Scruggs made
24 in Forsyth County. I have been through several proffers with
25 her, and her statements have been consistent, and essentially

1 they fully disclosed her dishonest conduct, and her part in this
2 crime, and they just remained consistent throughout several
3 proffer stories.

4 She also disclosed misconduct that she was guilty of
5 that we would not otherwise have known about and that we in turn
6 disclosed to Mr. Saviello pursuant to our obligations under
7 Giglio. She told us some things that we disclosed under Giglio,
8 that truly, we would have no way of finding out. She could have
9 made herself look better than she was. She also -- She could
10 have, you know, tried to put more responsibility on Ms. Scott
11 than she did. Ms. Scruggs never did that.

12 She also, because of the information she gave us post
13 Indictment about Germaine Monroe, and the paper trail in this
14 case made it appear that Germaine Monroe was an active
15 participant in this case, but based on the information Ms.
16 Scruggs gave us in her proffer, we learned that was not true,
17 and I want to note for the Court that that was the first thing
18 she wanted to tell us, before she told us anything that was
19 involved with testifying against Ms. Scott or moving the
20 prosecution forward, she wanted us to know, I really think you
21 have indicted the wrong person, and here is why, and as a result
22 of the information that we obtained and were able to confirm, we
23 were able to put Ms. Monroe in pretrial diversion. So Ms.
24 Scruggs also in my view prevented an injustice from being done
25 as to Ms. Monroe.

1 Finally, she testified at trial. Essentially, the
2 40-month sentence she received, because the Court gave her
3 credit for the 22 months she already served in Forsyth County,
4 was reasonable in light of everything she did, in light of her
5 cooperation, and in light of the guidelines, and I would like
6 for the Court to consider the case of United States versus Del
7 Campo.

8 THE COURT: Del Campo?

9 MS. HOYT: Del Campo, Your Honor. It's an Eleventh
10 Circuit case. And I have flagged the language that I would like
11 you to consider. It is at page -- I believe it's at page 1101
12 of the Court's decision. The Eleventh Circuit states as
13 follows: Defendants who cooperate with the government and enter
14 a written plea agreement are not similarly situated to a
15 defendant who provides no assistance to the government and
16 proceeds to trial. There is no unwarranted disparity even when
17 the sentence the cooperating defendant receives is substantially
18 shorter. It would seem patently unreasonable to endorse a
19 regime in which a defendant could steadfastly withhold
20 cooperation from the authorities and then cry foul when a
21 co-conspirator benefits from its substantial assistance to the
22 government. Because the defendant did not provide any
23 assistance to the government, there was no unwarranted disparity
24 between his and his co-defendant's sentences. And I would
25 submit to the Court that there is no such unwarranted disparity

1 in this case.

2 Your Honor, if I could just take a moment. With regard
3 to the need for deterrence, and I address -- the government
4 addressed this in its memorandum, but as the government pointed
5 out in its memorandum, fortunately, because of the termination
6 of her employment with Wachovia Bank and her conviction in this
7 case, Ms. Scott is unlikely to be employed by a bank or other
8 financial institution in the future, and that would preclude her
9 ability to engage in a crime that is very similar to this one.

10 But there is simply -- her complete lack of any showing
11 of remorse or any pangs of conscience about this case suggests
12 to the government that absent a significant sentence for the
13 crime she committed, she is not likely to be deterred from any
14 other type of fraudulent or criminal conduct in the future.

15 We address the issues about the need for deterring
16 others who are in similar positions from this type of crime, and
17 there clearly is that need in this case.

18 Your Honor, so for these reasons the government would
19 submit that a reasonable sentence is a guideline sentence
20 followed by the consecutive minimum mandatory sentence for
21 aggravated identity theft.

22 THE COURT: All right. I think we may have gotten out
23 of order a little bit, Mr. Saviello. Does your client wish to
24 address the Court?

25 MR. SAVIELLO: Your Honor, first, one brief response to

1 the government's argument and then Ms. Scott's mother would like
2 to be heard, and then her fiance, Mr. Adams, would like to be
3 heard, and Ms. Scott is reserving the right. She's a little
4 nervous. I would point out about the Home Depot issue, that is
5 Ms. Scott giving information to Home Depot suggesting Ms.
6 Scruggs was defrauding Home Depot. I would argue that is not
7 unsubstantiated, and in fact days before trial we learned Ms.
8 Scruggs had used Ms. Barker, used her name, Social Security
9 number and forged her signature on a credit card application at
10 Home Depot where Ms. Scruggs was the primary person, Ms. Barker
11 was the secondary person. Ms. Scruggs' intent was to get that
12 credit account, charge it up, not pay it, and then the problem
13 to pay that would then fall on Ms. Barker. We learned that
14 shortly before trial, so we would argue the comments Ms. Scott
15 directed to Home Depot about Ms. Scruggs are, in fact,
16 substantiated, that Ms. Scruggs actively and intended to pursue
17 Home Depot. Ms. Scott's mother, Ms. Crispin Williams, would
18 like to be heard briefly, Your Honor.

19 THE COURT: That will be fine. It always speaks well
20 for the family to be here. Tell me your name.

21 MS. WILLIAMS: I'm Pastor Diane Williams.

22 THE COURT: All right. And what do you need to tell me
23 about your daughter?

24 MS. WILLIAMS: I want to say this. I came to Atlanta
25 over thirty years ago, and when I came to Atlanta, I had eight

1 children. I didn't bring my eight children up here to get
2 killed or be put in circumstances like this. I tried the best
3 to my knowledge as a single parent to raise my children.

4 THE COURT: You came from Seminole County?

5 MS. WILLIAMS: Yes, sir, where you work on the farms,
6 you work very hard. I'm the grandmother of over 40 grand kids.
7 I have over 40, counting some that are being birthed now as we
8 speak, and I have over 6 great grand kids. The things that they
9 are accusing Yolanda of, she didn't do it. She didn't do it and
10 I can prove it. She didn't do it. When they say they searched
11 her closet, they didn't find a gun in there. There was a gun
12 there. The papers that she was putting together were on her
13 bed. I know, because I came here to help my child. The
14 businesses that Yolanda started up, they saying she was very
15 intelligent, I started those businesses to help my children. I
16 always wanted them to have. We worked -- these kids worked very
17 hard. We worked in the CNN Center with Ted Turner. We worked
18 in the health clubs. I worked. We worked. Those kids, little
19 kids, went to work with me daily to teach them the right way,
20 not to do things that are wrong.

21 And other things, just like the juror going to sleep.
22 How can you judge somebody when you are asleep? My God, this is
23 devastating, this child. And the check. I wrote the check, and
24 we tried to get that cleared up. I wrote that check. I did it.
25 We had the monies in the bank for it, but I wrote the check and

1 the guy, he just was mean, he just wanted to do that. I'm
2 telling you this stuff. And, oh, let me get down to it.
3 Trustworthy. Trusting somebody. I took Schnikia under my wing,
4 just as I did this boy, raised him a professional football
5 player. Schnikia came to me years ago, many years ago, and she
6 told me that she wanted to commit suicide because of the things
7 that she was doing, that her mother had her doing. There was an
8 old lady they had mistreated and took all of her credit cards,
9 stole all of her money. She died. Schnikia went through a lot
10 of stuff and one of my daughters helped Schnikia. She had been
11 out of the picture many years because they had scared me out of
12 seven thousand dollars on a condo. And I asked my children to
13 stay away from her, don't even be around her.

14 And when I found out that my daughter was talking back
15 to Schnikia, Schnikia had came to my daughter for help. She
16 said she couldn't get to her job, and my daughter had a BMW.
17 She let her use the car, and Schnikia tore up the car. And
18 after all of that they had some words, and because of that, she
19 violent. Schnikia had been -- This child would give the shirt
20 off her back. Even with that fight, she took the blame on her
21 because of my granddaughter was fighting the daughter-in-law.
22 Schnikia has been in my home. She has been in these children's
23 home. She has free access. She knows me. They always call me
24 momma. She has free access to go all through the house, to live
25 there, to do anything she wanted to do. Schnikia is no child in

1 this. Schnikia been doing this many, many years. I have gotten
2 on her many times about doing that evil stuff. She's a pro. My
3 God, like I said, if something don't be done about her, she is
4 going to get out in a few months, my God, God forbid what she
5 will do next. Her mother is the same way. Her mother does this
6 stuff. The aunts, all of them do it. And they think it's
7 funny. It's not funny to destroy somebody's life. You don't
8 take a child -- this child wanted to be a judge. She went to
9 law school. I couldn't afford to send her to Clayton State,
10 where she went. Then we tried to put her in Griffin and I
11 couldn't continue to pay it because I lost my job.

12 And when I did, she -- always, all throughout her life,
13 and I don't want anybody to sympathize with me. Do not pity me.
14 Only God can have mercy on me. But my children, but she wanted
15 to become a judge, and she still, no matter what happens out of
16 this circumstance, she still going to be a judge. She is going
17 to be a judge. Judge Hatchett is one of my dear friends. She
18 is going to be a judge. And I just wanted to speak to you to
19 tell you the things she is accused of here, she didn't do it.
20 She didn't do it. She loved her job, even to the point if she
21 wanted to steal something from a bank, over in Fayetteville, she
22 worked at that bank. There were times when she had to go in
23 that bank and open the door and run it by herself because the
24 employees didn't show up. She had access to the vault. She had
25 access to anything in there. She didn't do it. She loved her

1 job. She wouldn't do it. Thank you all so much for hearing me.
2 Thank you.

3 THE COURT: Thank you.

4 MR. SAVIELLO: Your Honor, Keith Adams would like to
5 have a few words as well.

6 THE COURT: That will be fine. All right. Tell me your
7 name and how are you related to the defendant.

8 MR. ADAMS: My name is Keith Adams and this is my
9 fiance'.

10 THE COURT: Okay.

11 MR. ADAMS: And I'm a professional football player. I
12 have known Yolanda since I was nine. She isn't the type of
13 person they are trying to portray her to be. I was married
14 before. My wife divorced me, took everything that I had. This
15 girl brought me in and she made me the person I am now. Now I
16 have a contract on the table with the New England Patriots. I
17 mean, we are starting a family together. This person, she's not
18 a thief. She's not anything like that. She got me saved back
19 into the Lord. This person works hard for Jesus. Jesus is her
20 King. That is her Savior. We go to church every Sunday, every
21 Wednesday. She stands up for what is right. She's been going
22 through this three years, Your Honor, three years. And I know
23 without a shadow of a doubt I would lay my life down for her,
24 like Jesus laid his life down for the church. That's the only
25 thing I have to say.

1 MR. SAVIELLO: Ms. Scott wants to be heard.

2 THE DEFENDANT: Your Honor, I want to speak. I felt
3 like it was only right that I speak today. I honestly took
4 those papers home to make a notebook for a training notebook.
5 That's why they keep saying the documents, the documents. Your
6 Honor, it was over a hundred some pages as to what they are
7 saying. The documents, if you look at all the documents, you'll
8 see there is training material in there. That's all it tells
9 you is how to do the transaction, how to be more effective at
10 what you are doing. I was trying to be more accurate, because
11 at the time when I took these documents home and when we was
12 going through a process at Wachovia, they was getting ready to
13 send our company overseas, and when they were sending the
14 company overseas, they were bringing the people in. My manager
15 came to us and told us, she said, whatever you got to do to
16 become more effective, if you are not an effective one, they are
17 going to eliminate your job. You are going to be gone. So she
18 said whatever you have to do, do it, but, of course, she's not
19 going to come here in front of you guys and testify she said
20 that, because under our company, she is just going to say she
21 has to go by the rules, she can only go by what Wachovia tells
22 her to go by. She can't just say, okay, I told them if they do
23 something, you know, don't say nothing, it's okay. She can't
24 say that. She's a manager.

25 But at the same time when I took these documents home,

1 all I was trying to do was become more effective at my job, so
2 they would eliminate each department, we had a review side, and
3 we had another side that does it, reviewing other materials, and
4 what they had did, they had just sent one side of the room over,
5 and they had got rid of their jobs and sent them overseas
6 already. They had got it down to only my department. We was
7 the last department left. They were trying to see what they
8 were going to do, whether they were going to eliminate it or
9 whether they were going to keep it.

10 So my thing was Colleen Britton sat right behind me,
11 Your Honor. That's where I copied the documents from her, as
12 you have seen, we showed you that in court, and when I copied
13 the documents, she said it's okay if you take them home, put a
14 notebook together, just bring it back. When they came to my
15 home, Your Honor, there were not documents all over my home.
16 They were only in my master bedroom. I was getting myself
17 prepared to go back to work and have this folded together. My
18 mother came to my house to get my car so she could pay a bill or
19 something for me, and I was in the process of getting myself
20 together for the week and getting my three-year-old son
21 together. When I was going through all of this stuff, Your
22 Honor, I understand it's like day one, when the government
23 arrested me and stuff, they wanted me to talk and cooperate with
24 them. I was going through so much myself. My son's father
25 walked out and left me by myself. I was helping my sister, whom

1 Schnikia was friends with, and that's how Schnikia even got into
2 my home, because of my sister. They were friends. I didn't
3 know she would do this type of stuff. This is somebody that ate
4 at my house, we laughed, talked together. I had no idea that
5 this person would steal from me and do something like this. I
6 didn't know she would do this. So when it came up and they
7 arrested me, I was at a loss. I was at a loss. I didn't know
8 what to think. They just -- I had all of these people coming at
9 me, saying all of this stuff. I'm just saying, Lord, I'm
10 already in a bad situation, and now here is somebody that came
11 and made it worse for me. I didn't know what to do. And they
12 just kept telling me, talk to us, talk to us, calling me and
13 stuff. I'm saying, Lord, why these people can't see that I'm
14 not trying to do that. Lord, if I was going to do that, Your
15 Honor, I worked with the bank all of these years, and I did open
16 the bank by myself. Even my manager came. There is nothing bad
17 she had to say about me, because I was trying to just do my job
18 the best I knew how to do it. I wasn't there trying to take
19 anything from anybody. I didn't want anything from anybody.
20 That's not what I was trying to do.

21 And then they said about the deposit into my account.
22 Your Honor, why would I have her go to Wachovia where I work,
23 not the branch, but why would you go to a place of my employment
24 to do fraud? Why would I have you to come right to my job to do
25 fraud? That doesn't make any sense. And then like so many

1 loopholes and laws in this case, Your Honor, there is so much
2 that it seems like they just decided since she told them me, she
3 knew that was a cover-up to just -- because she knew I worked at
4 the bank, she told you she asked my sister where I was employed
5 and stuff and them having a discussion. She found her perfect
6 opportunity to come in and do what she did. She stole from me.
7 She stole from these people. This is all she does is steal,
8 steal all the time, Your Honor.

9 I mean, I have to say my mercy is upon you, because, I
10 mean, I have got to do what I have got to do. I'm always trying
11 to help somebody. The stuff on my record is there because I was
12 trying to help people. Helping people. That's why I'm in the
13 predicament where I am at now. When you see my record and when
14 you say, you know, look what she did. This is not something
15 that I did. And I keep telling them that I did not do this. If
16 they would have just looked further, they would see I did not do
17 this. I was not trying to help nobody steal nobody's money or
18 anything, Your Honor. Why would I do that? I have a
19 three-year-old son. I lost everything I had, my home, my car,
20 everything. I have got nothing. I have had to move in with my
21 mother. I had to move in with my mother. You know, it's hard.
22 It's been hard for me. All of this time I have had to look at
23 my child, and my child say to me, you know, when he say to me,
24 momma, you know, I'm hungry, you know. You know what it is like
25 to have your child look at you and tell you they are hungry and

1 me, after working all of my life, doing everything for myself,
2 not asking people to help me? I'm used to working and doing my
3 own. I had to go and ask the government for assistance, you
4 know, to feed my child, to keep her from looking me in the eye
5 saying I'm hungry, because somebody put us in this situation.
6 I'm with my mom, I have to ask my mom, you know, mom, can you
7 take me here, do this for me. Of course, I know she is free
8 hearted, but people get tired. I can only do -- She can only do
9 so much for me. My kids is all I have. This is all we have.
10 I'm still trying to be here from scratch, and I can't move on
11 because of this case, and I can't give them anything that kids
12 really should have, because I have got this standing in my way.
13 This is making me where I can't get a job and provide for them.
14 I have to just make -- I mean, it's like, only thing I can think
15 of in my mind is I say love. All I can give them right now is
16 love, so I try to love them to the best of my ability, and make
17 sure I'm a good parent to them so that they can say, at least,
18 my momma didn't give me material stuff, but she did love me.
19 That's all I have left. That's all I have. I have nothing else
20 left. There is nothing.

21 THE COURT: All right. Thank you.

22 THE DEFENDANT: You are welcome.

23 MR. SAVIELLO: Nothing else, Your Honor. Thank you.

24 THE COURT: Okay. Well, pursuant to the Sentencing
25 Reform Act of 1984 it's the judgment of the Court that the

1 defendant, Yolanda Scott, is hereby committed to the custody of
2 the Bureau of Prisons to be imprisoned for a term of 30 months
3 as to Count 1, 24 months as to each of Counts 4 and 5, to be
4 served concurrently with each other and consecutive to Count 1,
5 for a total imprisonment of 54 months. It's further ordered the
6 defendant shall pay the United States a special assessment of
7 \$200 that will be due immediately.

8 The Court finds that the defendant does not have the
9 ability to pay a fine and cost of incarceration, so that is
10 waived. It's further ordered that the defendant make
11 restitution in the amount of \$125,604.94 to Wachovia Bank,
12 Norcross, Georgia. Restitution shall be paid in full
13 immediately. The defendant shall make payments from any wages
14 she may earn in prison in accordance with her financial
15 responsibility program. Any portion of the restitution not paid
16 in full at the time of release from imprisonment shall become a
17 condition of supervision and paid at a monthly rate of at least
18 \$150 or 25 percent of her gross income in excess of two thousand
19 per month.

20 Next, the defendant shall notify the U.S. Attorney of
21 the district within 30 days of change of any mailing or resident
22 address that occurs while the restitution remains unpaid. Upon
23 release from imprisonment she shall be placed on supervised
24 release for a term of 5 years on Count 1, and 1 year as to each
25 of Counts 4 and 5 to be served concurrently, giving a total

1 supervised release of 5 years.

2 Within 72 hours of her release from the Bureau of
3 Prisons she shall report to the probation officer to whom she's
4 assigned. While on supervised release she shall not commit
5 another federal, state or local crime, comply with the standard
6 conditions that have been adopted by the Court, and these
7 additional conditions: 1. She shall submit to one drug
8 urinalysis within 15 days after being placed on supervision and
9 two tests thereafter. 2. She shall cooperate in the mandatory
10 DNA testing as directed by the probation officer. 3. She shall
11 not illegally possess any kind of controlled substance. 4. She
12 shall make full disclosure of her finances and submit to an
13 audit of any financial documents at the request of the probation
14 officer. 5. She shall pay any financial penalty that is
15 imposed by the judgment and remains unpaid at the commencement
16 of her term of supervised release at the monthly rate of \$150 or
17 25 percent of any gross monthly income in excess of two
18 thousand. 6. She shall not incur new credit charges or open
19 additional lines of credit without approval of the probation
20 officer. 7. She shall not own, possess or have under her
21 control any firearm, dangerous weapon or other destructive
22 device. And 8. She shall submit to a search of her person or
23 property at any reasonable time at the request of the probation
24 officer. Ms. Scott, do you understand the sentence? Let me ask
25 the probation officer. The special assessment is 200 or 300?

1 PROBATION OFFICER: It should be 300.

2 THE COURT: Well, let me correct the sentence. The
3 special assessment that's ordered is 300 rather than 200. Ms.
4 Scott, do you understand the sentence?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Well, the Court sets the sentence in
7 accordance with the guidelines at the low end of the guideline
8 range, taking into consideration the various factors of 18 USC
9 3553(A), particularly the factor that she violated a condition
10 of trust as an employee in this theft. It's very hard to say
11 that if I had been on Superior Court she would have received a
12 greater sentence, because the sentence becomes erratic with
13 employee thefts with the desires of the victims sometimes, but
14 this amount of money and violating the condition of trust of an
15 employer warrants this type sentence in the Court's opinion.

16 Is there any objection by either side other than those
17 previously stated for the record to the ultimate findings of the
18 Court, the guideline calculations to the sentence, or the manner
19 in which it's been pronounced? On behalf of the government?

20 MS. HOYT: Your Honor, if I could, I apologize. I
21 failed to remember to bring this up to the Court earlier. The
22 Court will recall that when Ms. Scruggs was sentenced, the
23 restitution amount was reduced to \$94,104.94.

24 THE COURT: I noticed that, because I reviewed her
25 presentence today. Is that applicable to this case too?

1 MS. HOYT: It is, Your Honor. The loss amount for
2 sentencing purposes is the one hundred twenty-five thousand
3 dollar figure that's indicated in the report, but some of the
4 transfers were reversed, and so that's how we arrived at the
5 lower restitution.

6 THE COURT: Give me that figure again.

7 MS. HOYT: \$91,104.94.

8 THE COURT: All right.

9 MS. HOYT: And I would also ask the Court that if it
10 pleases that the sentence reflect that amount is owed jointly
11 and severally with Ms. Scruggs.

12 THE COURT: Right. And any other defendant that might
13 be under a similar order. Let me amend what I said to change
14 the restitution to \$91,104.94 and that restitution is jointly
15 and severally with Ms. Scruggs and any other defendant that may
16 stand convicted in the case, or for some other reason contribute
17 to the restitution. All right. Is there any objection on
18 behalf of the defendant?

19 MR. SAVIELLO: Your Honor, we just renew our objections
20 we made at trial and objections to the guidelines that were not
21 sustained by Your Honor.

22 THE COURT: Okay.

23 MR. SAVIELLO: Otherwise no other objections. I do have
24 a couple --

25 THE COURT: Wait a minute, just a minute, before we move

1 to the next item. If there are no other objections, the Court
2 will note those for the record and let you preserve them. Let
3 me advise the defendant she has the right to appeal. Of course,
4 she went to trial in this case so she has the right to appeal
5 her conviction and her sentence, and if she's unable to pay the
6 cost of an appeal she may apply for leave to file her appeal
7 without paying costs, and if she requests, the Clerk of the
8 Court will prepare and file a notice of appeal on her behalf.
9 With few exceptions any notice of appeal must be filed within 14
10 days after the judgment is entered in the case, which should
11 happen today. Do you understand your right to an appeal?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Now, I think your client -- I
14 have heard something about suicide, but I can't really imagine
15 your client would seriously entertain that with a young child.

16 MR. SAVIELLO: No, Your Honor, that was --

17 THE COURT: I don't think she's a flight or danger to
18 the community at this point, so I would consider her a good
19 candidate for voluntary surrender.

20 MR. SAVIELLO: Great.

21 THE COURT: That's one of your concerns. The
22 other concern, I'm happy to recommend some general location for
23 her to serve her sentence, but I'm pretty sure she is going to
24 wind up in Florida. That's probably the closest women's
25 penitentiary.

1 MR. SAVIELLO: We would ask the Court recommend as close
2 to metro Atlanta as possible. Her family and children are here,
3 and easing the ability to visit would greatly ease her mind,
4 Your Honor.

5 THE COURT: All right. Incarceration near Atlanta.

6 MR. SAVIELLO: And so, Your Honor, we would also ask for
7 voluntary surrender. Again, she's had no problems on pretrial
8 release. We believe she is a good candidate for that and she
9 will appear at the time and place as appropriate.

10 THE COURT: Is that all?

11 MR. SAVIELLO: That's all.

12 THE COURT: All right. So ordered. Well, I'll make
13 that recommendation. Let me explain to her and her family.
14 While I can recommend the general location of your
15 incarceration, the Bureau of Prisons does not have to follow my
16 recommendation and if they do not, there is nothing I can do
17 about it, but you are better off with that recommendation than
18 not having that recommendation in my opinion. But if you wind
19 up in New York, Montana, wherever, there is nothing I can do
20 about it, as I corresponded with a fellow last week about.

21 All right. Is there anything else I need to take up
22 with Ms. Scott's case?

23 MS. HOYT: Not on behalf of the United States.

24 MR. SAVIELLO: Not for the defendant. Thank you, Your
25 Honor.

